U.S. Secretary of Commerce Penny Pritzker and U.S. Trade Representative Michael Froman, together with Chinese Vice Premier Wang Yang, co-chaired the 25th U.S.-China Joint Commission on Commerce and Trade (JCCT) in Chicago, Illinois, on December 16-18, 2014. They were joined by U.S. Secretary of Agriculture Tom Vilsack to address agricultural concerns. Other U.S. participants included U.S. Ambassador to China Max Baucus, U.S. Trade and Development Agency Director Leocadia Zak, and additional representatives from the U.S. Departments of Agriculture, Commerce, State and Treasury and the Office of the U.S. Trade Representative. Other Chinese participants included China’s Ambassador to the United States Cui Tiankai and representatives from the State Council, the National Development and Reform Commission, the Ministries of Agriculture, Commerce, Finance, Foreign Affairs, Industry and Information Technology, and Science and Technology, the China Civil Aviation Administration, the China Food and Drug Administration, the China Insurance Regulatory Commission, the China National Tourism Administration, the General Administration of Customs, the General Administration of Quality Supervision, Inspection and Quarantine, the State Administration for Industry and Commerce and the State Forestry Administration, and the State-owned Assets Supervision and Administration Commission.

The following outcomes were achieved:

**AGRICULTURAL BIOTECHNOLOGY**

*China is the largest export market for U.S. soybeans ($14 billion in 2013) and a major export market for U.S. corn and corn products ($3.5 billion in 2013). Agricultural biotechnology is important to U.S. farmers of these products, with acreage for biotechnology varieties of soybeans and corn totaling over 90 percent of all varieties of soybeans and corn in 2014, enabling these farmers to increase yield while reducing their environmental footprint. China’s announcement of pending import approvals for three new events will lead to further increases in U.S. exports to China. In addition, China’s commitment to an intensified, multi-ministerial dialogue at the Vice Ministerial level on science-based innovation in agriculture will provide a forum for the two sides to discuss needed improvements in China’s regulatory framework for the review and approval of technology used for agriculture, to the benefit of both the United States and*
China.

**Strategic Agricultural Innovation Dialogue**

To implement the consensus reached by the Presidents of both countries at their bilateral meeting in November 2014, where China and the United States reached consensus to intensify science-based agricultural innovation for food security and China and the United States committed to strengthen dialogue to enable increased use of innovative technologies in agriculture, both sides agree to conduct an annual Strategic Agricultural Innovation Dialogue at a Vice-Ministerial level under the leadership of the Agriculture Working Group within the framework of JCCT, including officials from MOA, MOFCOM, USTR, USDA and officials from other relevant authorities of both countries. This dialogue is intended to create a favorable environment where both sides could carry out balanced, mutually beneficial exchange and cooperation on agricultural innovation. Relevant work plans and issues on the agenda will be put forward by the Agriculture Working Group, and this Vice-Ministerial dialogue will hold its first meeting in early 2015.

**Biotechnology Approvals**

In early December 2014, China announced that it would be issuing import approvals for three outstanding biotechnology products of significant importance to U.S. farmers, including two soybean events and one corn event.

**TECHNOLOGY LOCALIZATION**

*Too often, U.S. and other foreign companies operating in China face pressure to transfer valuable intellectual property rights to enterprises in China and to re-locate their research and development activities to China. Foreign companies operating in China must be free to make business decisions without government interference and must be able to compete on a level playing field. China’s commitments below should help to promote a more level playing field, although more needs to be done.*

The United States and China commit to ensure that both countries treat intellectual property rights owned or developed in other countries the same as domestically owned or developed intellectual property rights. Enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises. Both China and the United States confirm that the government is entitled to take measures to encourage enterprises to engage in research and development and the creation and protection of intellectual property rights.

**MEDICAL DEVICES AND PHARMACEUTICALS MARKET ACCESS**

*Exports of U.S. pharmaceutical products to China exceeded $1.2 billion in 2013. According to industry data, the U.S. pharmaceuticals industry directly employs more than 810,000 workers, supports a total of 3.4 million jobs in the United States, and provides annual compensation to its workers at approximately twice the average for all U.S. workers. China’s commitment below to devote more resources to and streamline China’s regulatory processes for pharmaceuticals will speed patient access to new medicines in China and thereby lead to increased U.S. exports to what is now the second largest market for pharmaceuticals in the world.*

*Exports of U.S. medical devices to China reached $2.7 billion in 2013. According to industry data, the U.S. medical device industry includes over 7,000 companies, most with less than 100 employees, and supports 1.9 million U.S. jobs overall. Cutting red tape in China’s medical device approval process, as China has committed to do below, will allow better patient outcomes in, and more exports to, China, which is the industry’s largest growth market.*

China and the United States affirm that significantly reducing the time-to-market for innovative pharmaceutical products and medical devices will benefit patients by allowing them to receive better treatment earlier. The United States and China have reached the following consensus:
1. China will accelerate the studying and pushing forward of the reform of the medical device and pharmaceutical regulatory review and approval system, and will make great efforts to eliminate the drug application backlog within 2-3 years. China’s efforts will include adding personnel, funds, streamlining relevant mechanisms, and increasing the speed of review.

2. Applicants who use Multi-Regional Clinical Trial data that includes data from China in order to apply for clinical trial waivers, and whose applications comply with the technical review requirements, can receive clinical trial waivers in China, in order to prevent duplicative testing.

3. China will implement measures that allow a drug not marketed in foreign countries to conduct clinical trials in China at the same time it is conducting clinical trials in another country. Applicants can submit evidence of marketing approval of a pharmaceutical product in another country (i.e. certificate of pharmaceutical product) when applying for the drug license after completing clinical trials.

China and the United States agree that for all draft pharmaceutical and medical device rules and regulations where notifications are required under the relevant WTO rules, a comment period will be provided that will be no less than 60 days.

In accordance with the Regulations on Supervisory Management of Medical Devices, China will, to facilitate practical regulatory needs, further accelerate the expansion and adjustment of clinical trial product exemption catalogues; expand the scope of medical devices that can be exempted from conducting clinical trials in China; reduce the number of medical device clinical trials and improve the efficiency of bringing imported medical devices to the Chinese market.

China and the United States agree to engage in enhanced dialogue with expert and high-level officials of relevant Chinese and U.S. agencies in 2015 to promote efficient pharmaceutical and medical device regulation and market access.

INTELLECTUAL PROPERTY RIGHTS

Protection of Trade Secrets in Government Proceedings and Trade Secrets Legislative Developments

Businesses and other entities in a wide variety of industry sectors rely on the ability to protect their trade secrets and their rights in other proprietary information. This information is often among a company’s core assets, and a company’s competitiveness may depend on its capacity to protect these assets. Trade secret theft threatens to diminish U.S. competitiveness around the globe, and puts American jobs at risk. This theft may arise in a variety of circumstances, including through the misuse of information submitted to government entities for purposes of complying with regulatory obligations. Through the commitments described below, which build on prior bilateral commitments made by China, China confirms the importance of protecting companies’ trade secrets, and agrees to study and exchange information on how to improve its protections, and to take enforcement actions when violations occur.

The United States and China confirm that trade secrets submitted to the government in administrative or regulatory proceedings are to be protected from improper disclosure to the public and only disclosed to government officials in connection with their official duties in accordance with law. Each side will further study how to optimize its respective relevant administrative and regulatory procedures within its legal system, where appropriate, including by strengthening confidentiality protection measures, limiting the scope of government personnel having access to trade secrets, limiting the information required from companies to include only information reasonably necessary for satisfying regulatory purposes, and stipulating that any requirements on government agencies to publicly disclose information appropriately allow for the withholding of trade secrets. Government officials who illegally disclose companies’ trade secrets are to be subject to administrative or legal liability according to law. The United States and China agree to exchange information on the scope of protection of trade secrets and confidential business information under their respective legal systems. China acknowledges that it is to conduct a legislative study of a revised law on trade secrets. The United States acknowledges that draft legislation proposing a Federal civil cause of action for trade
Geographical Indications

The United States has engaged extensively with its trading partners to promote and secure access to foreign markets for U.S. exporters whose products use trademarks or common names like “parmesan” and “feta” cheese. The Chinese commitments described below ensure that China’s growing market remains open to exports of these U.S. products, which are substantial and increasing. For example, exports of U.S. cheeses to China increased by 600 percent between 2009 and 2013.

China and the United States acknowledge the importance of providing strong intellectual property protections and understand the following:

- That a term, or its translation or transliteration, is not eligible for protection as a GI in its territory where the term is generic in its territory;
- That the relationship between trademarks and GIs is to be handled in accordance with relevant articles in the TRIPS Agreement;
- That legal means are available for interested third parties on the above grounds to object to and to cancel any registration or recognition granted to a GI; and
- Where a component of a compound GI is generic in its territory, the GI protection is not to extend to that generic component. In the event a relevant agency does not have a disclaimer practice, the agency may adopt such practice noting that the compound GI registered or recognized is to be protected only in compound form.

China and the United States are to hold dialogues on geographical indications.

Inventor Remuneration

Promoting predictability in the protection and enforcement of intellectual property rights, including by affirming freedom of contract in inventor employment agreements, promotes critical innovation and research, areas in which the United States excels. China’s commitment below recognizes the importance of predictability for inventors in respect of their inventions and creations and should help to achieve that objective for inventors who are subject to China’s domestic laws.

The United States and China commit to protect the legal rights of inventors in respect of their inventions and creations, in accordance with their respective domestic laws and regulations, and in line with their domestic laws, commit to respect the legitimate rules and regulations developed by employers and legitimate contracts between employers and inventors concerning inventor remuneration and awards.

Data Supplementation

Achieving greater consistency in the evaluation of patent application data is critical to ensure that pharmaceutical inventions protected elsewhere in the world are also recognized in China. China’s fast-growing pharmaceuticals market is already the world’s second-largest, and it represents a major growth opportunity for U.S. exports. Through the continuing engagement with China described below, the United States will strive to ensure that China’s patent authorities operate with the consistency found in other markets around the world.

The U.S. and China have been maintaining a useful and informative discussion on the supplementation of data, since the 24th JCCT in 2013, and China has made improvements on the practice pursuant to Chinese laws and regulations. Both sides affirm that continued exchanges and engagement on specific cases are beneficial.
Sales of IP-Intensive Goods and Services

Effective enforcement of intellectual property rights creates an environment in which sales of legitimate intellectual property-intensive goods and services can flourish. China’s commitment below will bring new focus to the United States’ and China’s work together to determine how best to foster a better environment for facilitating increased sales of legitimate intellectual property-intensive goods and services in China.

The United States and China reaffirm their commitments to foster a better environment to facilitate increased sales of legitimate IP intensive goods and services (“legitimate sales”). The United States and China agree to study and exchange information on how to accomplish this objective. Areas of study and exchange are to include, as appropriate: metrics to show the levels of legitimate sales; information on how to analyze the economic impact of IP in each economy, sharing data on IP-intensive imports and exports if available; information on effective IP enforcement actions as well as relevant IP-related legal and regulatory reforms, and information on civil damages. The status of the discussion is to be reflected in the annual report of the U.S.-China Joint Commission on Commerce and Trade IPR working group.

Online Infringement

A rapidly growing share of sales in China occurs in the online environment, making it critical to focus enforcement attention there to combat sales of pirated and counterfeit goods. Through the commitments described below, China has agreed to work together with the United States and to take steps to prioritize its enforcement in this area.

China and the United States are to strengthen enforcement against unlawful trademark counterfeiting and copyright piracy activities in the online environment and to deter the occurrence of infringement and counterfeiting through criminal, civil and administrative remedies and penalties, according to law. Building on the foundation of the June 18, 2014 Leading Group’s Work Plan for Fighting Infringement in the Online Environment, China will, in a practical and timely fashion, classify products with significant impacts on public health and safety as priorities, and carry-out enhanced enforcement actions. Both China and the United States are to continue their effective cooperation in cross-border enforcement efforts against counterfeit and pirated goods, and conduct exchanges on the effectiveness of enforcement efforts.

COMPETITION LAW

U.S. industry has asserted that China’s competition policy enforcement authorities seem to be targeting foreign companies and at times use Anti-monopoly Law investigations as a tool to protect and promote domestic national champions and domestic industries. U.S. industry also has expressed concern about insufficient predictability, fairness and transparency in China’s investigative processes, as well as pressure from the Chinese authorities not to seek outside counsel or have counsel present at meetings. China’s commitments below help to address several of these concerns.

1. In order to build on the recognition of the United States and China in the Sixth Meeting of the U.S.-China Strategic and Economic Dialogue that the objective of competition policy is to promote consumer welfare and economic efficiency, rather than promote individual competitors or industries, and that the enforcement of their respective competition laws should be fair, transparent, objective, and non-discriminatory, and China’s commitment that its three Antimonopoly Enforcement Agencies (AMEAs) are to provide to any party under investigation information about the AMEAs’ competition concerns with the conduct or transaction, as well as an effective opportunity for the party to present evidence in its defense:

   a) China clarifies that in enforcing the AML, all business operators shall be treated equally.

   b) Where AML violations are found, China clarifies that it is to impose enforcement measures that address the harm to competition, and not to impose enforcement measures designed to promote
2. China clarifies that its AMEAs will, (1) when undertaking administrative actions, strictly follow statutory limits on their authority, procedures, and requirements as laid out in China’s relevant laws, regulations and rules; and (2) before imposing penalties, notify the parties of the facts, grounds, and basis according to which the administrative penalties are to be decided, notify the parties of the rights that they enjoy in accordance with the law, and provide the parties with the right to state their cases and to defend themselves.

3. China clarifies that all administrative decisions that impose liability on a party under the AML will be provided in writing to the party and include the facts, reasons, and evidence on which the decision is based. China clarifies that it will publish the final version of administrative decisions that impose liability on a party under the AML in a timely manner. Administrative decisions made public in accordance with law should not include contents involving what are legally commercial secrets.

4. China will ensure that, upon request from a party involved, the three AMEAs are to allow Chinese practicing lawyers to attend and participate in meetings with any of the three AMEAs. China will ensure that, upon request from the party involved, and after obtaining approval from the AMEA, which shall be granted as normal practice, the following persons may attend the meetings with any of the three AMEAs: (1) representatives of foreign law firm representative offices established in China, who are permitted to attend and advise on international law and practice and provide information on the impact of the Chinese legal environment, but not permitted to conduct activities that encompass Chinese legal affairs, and (2) foreign legal counsel practicing in other legal jurisdictions, who are permitted to attend and provide information on the subject transaction or conduct and information on the laws or international practices of the legal jurisdiction where they practice.

GOVERNMENT PROCUREMENT REGULATIONS

Chinese government agencies spent almost $230 billion on purchases of goods and services in 2012. China’s commitments below represent a step in the right direction to help ensure that the goods of U.S. companies invested in China and goods imported from the United States can access this important government procurement market, while China and other WTO members continue to negotiate the terms of China’s accession to the WTO Government Procurement Agreement.

China confirms that it will publish for public comment the draft Interim Administrative Measures for the Government Procurement of Domestic Goods after revising and improving it on the basis of thorough consideration of various opinions, including achieving cost savings, decreasing administrative burdens, and increasing flexibilities.

TREATMENT OF INTELECTUAL PROPERTY IN STANDARDS SETTING

The United States has agreed to conduct a dialogue with China to reduce uncertainties regarding protections for companies contributing patented technology during standards-setting processes in China. Voluntary, consensus-based technological standards promote innovation, competition and consumer welfare and have helped spur investment and advances in a wide range of industries. Companies contributing patented technology during a standards-setting process typically agree to license their patents under certain terms. These terms need to be agreed voluntarily and free of government coercion or involvement.

China and the United States recognize that standards setting can promote innovation, competition and consumer welfare. They also reaffirm that IPR protection and enforcement is critical to promote innovation, including when companies voluntarily agree to incorporate patents protecting technologies into a standard. Both sides recognize that specific concerns may exist relating to the licensing of standard essential patents that are subject to licensing agreements. China and the United States commit to continue engaging in discussion of these issues.

FISHERIES
Illegal, unreported or unregulated (IUU) fishing is detrimental to fish stocks and unfair to fisherman catching fish legally, depressing prices and damaging trade. Information sharing to combat IUU fishing is an important step in stopping IUU-caught fish from entering commerce. Current U.S. trade in fisheries products, valued at $1.2 billion in U.S. exports and $2.8 billion in U.S. imports, is expected to increase due to increased volumes to be traded as well as increased product value. Increased transparency in trade statistics, to which the United States and China have committed below, will ultimately contribute to the sustainability of fisheries resources and increase the value of legally harvested products.

The United States and China agree to work together to combat illegal, unreported, or unregulated (IUU) fishing, including by developing and sharing improved data on trade in fish and fish products. As a first step, both sides agree to meet in the first half of 2015 to begin sharing information about methodologies on trade statistics for fish and fish products, including greater specificity in the harmonized system, species of interest, and best practices for tracking product.

LEGAL SERVICES

China agrees to conduct research and discussion at an appropriate time in 2015 to introduce the status and process of opening the Chinese legal services market, and to invite advice and suggestions from the foreign legal community. In the pilot work of exploring ways and mechanisms for strengthening business cooperation between Chinese and foreign, Hong Kong, and Macau law firms in the Shanghai Pilot Free Trade Zone, Chinese relevant authorities are in the process of drafting implementation rules. Both sides agree to continue to exchange ideas on this work.

COOPERATIVE ACTIVITIES

Administrative Law

To further enhance mutual understanding of the two sides’ administrative licensing procedures and their impact on the business community, the United States and China held a productive joint exchange on administrative licensing in Washington, DC in May 2014 that included participation of the business communities of both sides. The United States and China will continue their joint exchange in Spring 2015 by broadening the topic of discussion beyond administrative licensing to other administrative law and administrative procedure issues of concern to our business communities, including the protection of confidential business information in administrative proceedings, and accountability for administrative decisionmaking, with additional topics to be mutually determined.

Bad Faith Trademark Filings

The United States’ 60 trademark-intensive industries represent over 22 million American jobs, according to a U.S. Commerce Department study. A key challenge faced by U.S. trademark owners in China arises from bad faith trademark filings. The United States plans to use strengthened discussions with China to work toward a satisfactory resolution of this issue as quickly as possible.

Both sides agree to continue to prioritize the issue of bad faith trademark filings, and to strengthen communication and exchange on this issue through existing bilateral and multilateral channels.

Engagement on Judicial Best Practices

The United States and China commit to continue to strengthen exchange and cooperation on issues related to judicial organs through the IPR Working Group and other bilateral mechanisms.

Food and Drug Safety Inspections

To promote bilateral cooperation in food safety, the U.S. Food and Drug Administration (U.S. FDA) and China’s General
Administration of Quality Supervision, Inspection and Quarantine signed the Implementing Arrangement Between the Food and Drug Administration of the Department of Health and Human Services of the United States of America and the General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China Regarding the Cooperative Mechanism of Food Safety Regulatory Staff on the placement of food safety regulatory staff in one another’s country. The U.S. FDA and the China Food and Drug Administration also signed the Implementing Arrangement Between the Food and Drug Administration of the Department of Health and Human Services of the United States of America and the China Food and Drug Administration of the People’s Republic of China Regarding the Cooperative Mechanism of Regulatory Staff on the placement of drug safety regulatory staff in one another’s country in November 2014.

**Licensing of Technology**

The United States and China both commit to continue to maintain exchanges and dialogue regarding technology import and export license agreement issues.

**Trade Statistics**

The JCCT Statistics Working Group (SWG) in December 2014 signed a document that outlines the working group’s future work on analyzing the U.S.-China trade statistics. It is the first time that the working group’s work plan includes trade in services in addition to goods. The SWG, under the JCCT, is a highly cooperative effort through which the United States and China discuss statistical issues to achieve a better mutual understanding of the official statistics that each country produces. This work fosters a better understanding of the economic ties between the United States and China and helps each country understand the bilateral trade statistics.

**U.S.-China Legal Exchange**

The U.S. Department of Commerce and China’s Ministry of Commerce and State Council Legislative Affairs Office agreed to lead the U.S.-China Legal Exchange in January 2015, during which U.S. government representatives are to inform members of the Chinese business, legal, and academic communities in Beijing and Wuhan, China of recent developments in U.S. law on the topics of regulation of air pollution control and legal aspects of conducting international electronic commerce. Both sides agreed to convene the next Legal Exchange in the United States, and to work together promptly to agree on the topics to be covered in the exchange and the cities in the United States where it will take place.

###


**Page Links:**

[2] [http://www.commerce.gov/category/tags/jcct](http://www.commerce.gov/category/tags/jcct)